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Expressive Freedom on Campus and the Conceptual Elasticity of Harm

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Abstract

High-profile controversies have created an impression that expressive freedom is imperilled on university campuses in North America. Analyses of this alleged campus crisis typically focus either on the negative psychosocial characteristics of those who oppose potentially harmful expression or on the cynical ways that expressive freedom can be invoked to normalize harmful expression. Conversely, I argue that theories of harm are key to understanding the contemporary discourse and politics of expressive freedom on campus. To shift the frame of analysis, I critically analyze three interrelated theoretical concepts that feature elastic conceptualizations of harm and are consequential for expressive limits in an academic environment: epistemic injustice, argumentational injustice and epistemic exploitation. I argue that all three concepts require a distinction between testimony and argumentation in order to better balance protection from harm, on the one hand, and expressive freedom and open inquiry, on the other.

Résumé

Des controverses très médiatisées ont donné l'impression que la liberté d'expression est en péril sur les campus universitaires en Amérique du Nord. Les analyses de cette prétendue crise des campus se concentrent généralement sur les caractéristiques psychosociales négatives de ceux qui s'opposent à une expression potentiellement délétère ou sur les façons cyniques dont la liberté d'expression peut être invoquée pour normaliser une expression nuisible. À l'inverse, je soutiens que les théories du préjudice sont essentielles pour comprendre le discours contemporain et la politique de la liberté d'expression sur les campus. Pour en modifier le cadre, je formule une analyse critique axée sur trois concepts théoriques interdépendants qui présentent des conceptualisations élastiques du préjudice et qui sont la conséquence des limites expressives dans un environnement universitaire : l'injustice épistémique, l'injustice argumentative et l'exploitation épistémique. Je soutiens que ces trois concepts nécessitent une distinction entre témoignage et argumentation afin de mieux équilibrer la protection contre le préjudice d'une part, et la liberté d'expression et l'enquête ouverte d'autre part.

Keywords: political theory; freedom of expression; academia; epistemic injustice; harm

Mots-clés : Théorie politique; liberté d'expression; milieu universitaire; injustice épistémique; préjudice

Introduction

In the contemporary moment, expressive freedom looms large. Particularly on North American university campuses, high-profile event disruptions and cancellations (deplatforming) and concerns about campus phenomena such as trigger warnings and safe spaces have prompted some critics to question whether expressive freedom might be imperilled precisely where it ought to be most cherished (Lukianoff and Haidt, 2018). While much of this criticism merely echoes the culture wars from previous decades (Berman, 1992; Gates et al., 1994; Kimball, 1990; Marchak, 1996; Richer and Weir, 1995), some of its contours are novel. For example, the effects of social media, new protest movements and the intensification of partisan political polarization are distinctive features of the past decade. In turn, the increased cadence and novelty of these controversies has also renewed interest among academics (Baer, 2019; Ben-Porath, 2017; Chemerinsky and Gillman, 2017; Palfrey, 2017; Roth, 2019; Scott, 2019; Whittington, 2018).

Although this alleged free speech crisis could be easily mistaken for an American phenomenon, Canada, too, has experienced its fair share of campus controversy (Reddekopp, 2017). Wanting to capitalize on the perception that something is terribly amiss, recently elected centre-right provincial governments in Ontario (2018) and Alberta (2019) swiftly moved the alleged crisis from the pages of opinion editorials to official government policy. Doug Ford’s Progressive Conservatives and Jason Kenney’s United Conservative party have now compelled post-secondary institutions in their respective provinces to create explicit expressive freedom policy statements (Cameron, 2020; Friesen, 2018; Graney, 2019).

High-profile controversies and the demand for expressive freedom policies have led to a search for compelling explanations. Chief among them is the argument that expressive freedom is degenerating on campus because of increasingly intolerant, censorious and (sometimes) violent students and the timid administrations that enable them (Carpay and Kennedy, 2018; Friedersdorf, 2016; Murphy, 2016; Wentz, 2016). This narrative (the “snowflake thesis”) is best represented by Greg Lukianoff and Jonathan Haidt’s *The Coddling of the American Mind* (2018), easily the most commercially successful and accessible take on the topic. In the book, the authors argue that the lack of campus “viewpoint diversity” is less about political divides and more about the generational differences that imbue students with a particular blend of intolerance and fragility. Another popular explanation, partially framed in response to the snowflake thesis, argues that the alleged campus crisis is merely a continuation of a historical backlash to universities becoming more diverse (the “backlash thesis”). In this understanding, the invocations of expressive freedom on campus are cynical attempts to shield questionable ideas from scholarly scrutiny and normalize potentially harmful expression on campus.

While both of these approaches offer some insight, they ultimately elide the core theoretical question at hand: How should harm be conceptualized as expression’s natural restraint in an academic environment? Accordingly, I argue that *theories of harm* are key to understanding the contemporary discourse and politics of expressive freedom on campus. In particular, an issue often (mis)represented in terms of coddled students or a backlash against diversity contains a much more nuanced question about theorizing harm.

My primary goal, then, is to shift the frame of analysis away from the snowflake thesis (individual psychosocial deficiencies) and backlash thesis (antipathy to diversity) and toward the argumentation and justification that might be marshalled when harm is invoked as an expressive limit. I do this by engaging with novel theoretical approaches that challenge assumptions about the proper limits of expression and bear directly on expressive limits in an academic environment. Chief among these is the concept of epistemic injustice, drawn from the work of philosopher Miranda Fricker, which posits a capacity to harm individuals as “knowers” if and when those individuals suffer identity-based credibility deficits. I offer a mostly sympathetic critique of this concept, as well as of two additional (but intimately related) concepts.

To begin, I provide a brief historical comparison to illustrate how approaches to expressive freedom have changed in recent history. From there, I critique the two dominant explanations for the alleged campus crisis (the snowflake and backlash theses) and make the case for shifting the frame of analysis to theories of harm. I then analyze three interrelated theoretical concepts that are emblematic of elastic conceptualizations of harm—epistemic injustice (Fricker, 2007), argumentational injustice (Kapusta, 2017) and epistemic exploitation (Berenstein, 2016)—and highlight the problematic ways each could unjustifiably restrict expressive freedom in an academic environment. Bolstered by a distinction between dignitary and intellectual safety in the recent work of Sigal Ben-Porath (2017), my threefold analysis primarily suggests that a similar distinction be made between testimony (personal experience) and argumentation (normative claims). This distinction allows each theoretical concept to retain its ethical imperative without reflexively validating invocations of harm as an expressive injunction and thus potentially impinging upon expressive freedom and open inquiry.

History and Context of Campus Expression in North America

Although critiques of higher education predate the sociocultural upheavals of the 1960s (Buckley, 1951), this period is key to understanding the alleged campus crisis. An obvious exemplar is the Free Speech Movement on the University of California, Berkeley, campus in the early 1960s. Student activists, some of whom had recently returned from civil rights activism (volunteering in the Freedom Summer of 1964), were incensed that the Berkeley administration mostly forbade political expression on campus. Ensuing protests and sit-ins attracted thousands of students, eventually led to the administration relenting, and galvanized student movements across the country and around the world (Cohen, 2009). Student activists were demanding that the university loosen its expressive restrictions and sought to expose inconsistencies between the university’s self-proclaimed mission to pursue truth and knowledge without constraint, its institutional rules and the capricious behaviour of administrators.

According to Mario Savio, the most recognized face of the Free Speech Movement, expressive freedom was “the most dangerous [right] . . . in the last analysis, because if the thing you tell people about is *bad enough* then it . . . leads immediately to advocacy, and action” (Cohen, 2009: 79). During negotiations, Savio was explicit about demanding legitimate reasons for the authority wielded by the

university, especially when it made policy decisions with little to no discernable rationale (83). Thus, the Free Speech Movement practised a radical immanent critique of the institution, arguing that expressive restrictions were incompatible with its self-avowed mission (the pursuit of truth and knowledge). As a result of this and other student upheavals, campuses quickly became synonymous with the spectre of youthful protest in the popular imagination. Further, these movements contributed to the impression that campuses ought to be exemplars of expressive freedom by retaining their unique form of collegial autonomy and a singular mission.

Approximately five decades later, UC Berkeley was again the fulcrum of a debate about the state of expressive freedom on campus. In response to an event featuring Milo Yiannopoulos, far-right provocateur (and self-proclaimed “troll”), several hundred protestors descended upon Berkeley in early 2017. Some of the protestors used black bloc tactics, engaged in skirmishes with Yiannopoulos supporters and caused damage to (and then set fire to) campus and police property estimated at more than \$100,000 (Fuller, 2017). The debacle resulted in a predictable chorus of criticism. Many noted the historical irony, which was obviously Yiannopoulos’s strategy all along (Wong and Levin, 2017). Even President Donald Trump chimed in on Twitter, warning that his administration could withhold federal funding if colleges and universities didn’t protect expressive freedom. Two years later, he signed an executive order mandating just that, although the order merely underlines existing protections (Thomason, 2019).

Confrontations like this—between student protestors and edgy political-pundits-turned-entrepreneurs—are now commonplace, with the latter relishing an opportunity to portray the college campus as a bastion of progressive intolerance and to attract some sympathetic media coverage. Interestingly, student protestors were again practising a radical immanent critique of the institution. This time, however, they argued that restrictions on expression were *compatible* with another self-avowed mission: providing a safe and hospitable environment for the institution’s community members. Whereas the Free Speech Movement asserted expressive freedom as a non-interference principle that befitted less institutional control, contemporary student protestors demanded precisely the opposite: an administration that would more readily interfere with expressive freedom if warranted.

Similar events across North America likewise suggest that changes in approaches to expressive freedom on campus are afoot. The most widely reported events typically revolve around a controversial speaker being deplatformed as a result of venues being pressured to cancel and/or raucous and disruptive protests (Heinze, 2019a; Smith, 2020). At UC Berkeley, other conservative pundits stirred controversy after the Yiannopoulos riot, including Ann Coulter and Ben Shapiro (Panzar and Tchekmedyian, 2017; Peters and Fuller, 2017). At Middlebury College, Charles Murray was violently deplatformed (Saul, 2017). At Yale University and the Evergreen State College, students berated their administrators for allegedly failing to create a more hospitable environment for minorities, and the terse confrontations went viral (Friedersdorf, 2015; Hartcollis, 2017).

In Canada, similar examples include a fire alarm effectively cancelling an event featuring Faith Goldy at Wilfrid Laurier University and an appearance of Ezra Levant at Ryerson University being disrupted after it was relocated due to security concerns (Booth, 2018; Malyk, 2017). Ironically, one of the most high-profile

incidences of deplatforming involved an event titled “The Stifling of Free Speech on University Campuses.” In response to an inundation of complaints and an inability to provide adequate security, Ryerson University cancelled the event, and it was subsequently moved to a different venue (Hauen, 2017). The original lineup for the event featured Goldy (who was later excluded due to her extremism) and University of Toronto professor and clinical psychologist Jordan Peterson.

Nothing would solidify the perception that something was terribly amiss on Canadian campuses more than Peterson himself. In the fall of 2016, when he declared his refusal to use gender-neutral pronouns, as allegedly compelled by new legislation (via Bill C-16), he quickly became the cause célèbre of campus critics everywhere (Peterson, 2016; Bartlett, 2018). Later, Wilfrid Laurier teaching assistant Lindsay Shepherd would magnify Peterson (and the alleged campus crisis) by showing a clip of him on TVO’s *The Agenda* to her introductory communications seminar and then being critically interrogated by superiors in her department (Hutchins, 2017).

To be clear, these events are neither indicative of a crisis (Sachs, 2018) nor novel when put in historical context (Smith, 2020). But they do vividly demonstrate that approaches to expressive freedom may be changing in the contemporary moment. Rather than speculatively extrapolating from these events, it would be more productive for scholars to analyze the ideas and arguments that can be marshalled to justify expressive limits on campus. Before analyzing some of these novel conceptualizations of harm, I will discuss two explanatory frameworks catalyzed by recent events.

Two Theses of the Campus Crisis

As noted above, two explanatory frameworks for understanding the alleged campus crisis predominate, the snowflake thesis and the backlash thesis, but both have some inherent limitations that political theory can address. The snowflake thesis has gained impressive momentum since 2015 (Lukianoff and Haidt, 2015). It has the advantages of piggybacking on long-standing anxieties about youth culture, decades of punditry alleging that higher education has been captured by progressives, and a flurry of controversies demonstrating the sometimes absurd nature of campus unrest. Although there is an explicit recognition that scholarship is consequential for evolving approaches to the question of expressive freedom on campus, if and when Lukianoff and Haidt engage with theory, it is strikingly shallow.

Although the authors do offer brief criticisms of concept creep (that is, words being understood as literal violence), Kimberlé Crenshaw’s version of intersectionality in theory and practice, and Herbert Marcuse’s concept of repressive tolerance (Lukianoff and Haidt, 2018: 24–26, 64–71), they more often frame the problem in terms of individual psychosocial deficiencies of those who oppose potentially harmful expression on campus. As a result, Lukianoff and Haidt’s analysis ends up pathologizing students with potentially legitimate grievances about expressive freedom; notably, the book includes an appendix on cognitive behavioural therapy, ostensibly to provide a redress for some of the cognitive distortions underpinning campus unrest.

The snowflake thesis predominates despite being based on scant empirical data (Dea, 2018; Sachs, 2018), but arguments against it have sometimes relied upon

flimsy argumentation and analysis too. The major countervailing argument, the backlash thesis, draws attention to the long-standing efforts to resist diversity on campus. In the wake of the 1960s, various social movements transformed into academic disciplines, commensurate with novel theories and methodologies grounded by collective identity and experience (Ferguson, 2012). Student populations also became increasingly diverse, as universities loosened their exclusionary norms (Baer, 2019; Ben-Porath, 2017). These developments meant that individuals and groups once easily ignored are now an important part of academic life, even though access to academia remains uneven (Henry et al., 2017).

But these marginal gains for equity-seeking groups have not been without resistance. A host of critics have argued that scholarship grounded in identity-based particularism perverts the pursuit of truth and knowledge (Bawer, 2012; MacDonald, 2018; Scruton, 2015). In this context, the “weaponization” of expressive freedom sits comfortably within a broader ongoing backlash against diversity on campus (Liptak, 2018; Malik, 2019; Manne and Stanley 2015; Moskowitz, 2019; Picazo, 2017; Zine, 2018). The term *expressive freedom* itself is sometimes considered a “red herring,” “Trojan horse” or “dog whistle” that facilitates the normalization of far-right politics and discourse on campus (Climenhaga, 2019; Levenson, 2017; Press Progress, 2019; Rangwala, 2019).

While the backlash thesis has some explanatory potential, it is an oversimplification to frame all (or even most) invocations of expressive freedom on campus as a backlash to diversity. Likewise, the reflexive association between a strong defence of expressive freedom and classical liberal theory (or conservative and libertarian thought) is largely unearned (Heinze, 2016a, 2016b, 2017, 2019b). In the same way that there are potentially sound reasons for challenging a generous margin of appreciation for expression on campus, there are potentially sound reasons for challenging expressive restrictions on campus, and from a wide range of perspectives. A corrective for these partial explanations, then, is to focus on the ideas at the root of the alleged campus crisis (Whittington, 2018: 57), something for which political theory is well positioned.

Conceptualizing Harm in Political Theory

What can account for these markedly different approaches to expressive freedom in academic contexts? The answer, I think, is that elastic conceptualizations of harm are increasingly legitimizing expressive restrictions, despite there being reasonable disagreements to have about definitively drawing these boundaries.

Because harm is expression’s inseparable restraint in theory and practice, a specific conceptualization of harm is indispensable for understanding issues related to expressive freedom. For example, in Canada, section 2(b) of the Charter protects a wide scope of expression, but (if it is nonviolent) it is tempered by limits informed by the connection between expression and reasonably anticipated harms (Cameron, 1997, 2012; Moon, 2000). In the most recent ruling on the constitutional validity of hate speech proscriptions, *Saskatchewan (Human Rights Commission) v. Whatcott* (2013), the Supreme Court unanimously decided that “a reasonable apprehension of societal harm” is the barometer for a legislative prerogative in this context (para. 135). Although some scholars disagree over the speculative connection between

expression and harm in Canadian law (Braun, 2004; Cameron, 2013; Heinze, 2016a; Newman, 2017; Schutten and Haigh, 2015; Sumner, 2004; Zwibel, 2013), similar debates in political theory are perhaps even more intricate and contentious.

The reflexive conceptualization of expression and harm in liberal democracies (including Canada) is best encapsulated by the work of John Stuart Mill (Heinze, 2016a: 62; Moon, 2000: 9–12). Mill's truth-based defence provides a wide margin of appreciation, warning that all forms of censorship are, in practice, an assumption of infallibility (Mill, 2015: 19). Although he also grants government the authority to wield coercive power over the individual to prevent harm done to others, harm is largely understood as material, demonstrable through direct causation and experienced at the individual level.

Since then, however, various strands of interdisciplinary theory have offered some robust and nuanced (re)conceptualizations of harm. For example, harm can also be psychological (Fanon 2008; Lawrence, 1987), environmental (Dworkin, 1981; MacKinnon, 1993; Waldron, 2012), epistemic (Medina, 2013; Spivak, 1988), experienced at the group level (Delgado and Stefancic, 2004, 2018; Matsuda et al., 1993) and need not have a clear chain of causation (Gelber, 2002; Gelber and McNamara, 2016; Langton, 1993; McGowan, 2019; Tsesis, 2002). In practice, these competing conceptualizations of harm contest the margin of appreciation that typically applies to liminal expression, sitting uneasily between the merely offensive and objectionable, on the one hand, and what is explicitly proscribed by law, on the other. Unsurprisingly, this type of liminal expression is the catalyst for almost every contemporary expressive freedom controversy on campus.

Many of the debates associated with the alleged campus crisis hinge less on whether individuals have a legal or institutional right to expressive freedom and more on whether their expression has caused sufficient harm to legitimize expressive restrictions. How one conceptualizes harm will, then, automatically condition the margin of appreciation for expression and can further condition expression itself (that is, self-censorship), even when the latter falls well within legal or institutional thresholds. Consequently, well-meaning but elastic conceptualizations of harm are laden with unintended consequences. While they might admirably sensitize one to various forms of harm that are well below the aforementioned thresholds, they might also unduly restrict expressive freedom and open inquiry, and especially so in an academic environment.

As Richard Moon (2019) rightly points out, if the theoretical assumptions that undergird justifications for expressive freedom are unwarranted—namely, individual rationality and autonomy, good faith epistemic engagement, and equitable access and distribution in the marketplace of ideas—then a re-examination of the principle is in order if it is to remain relevant in changing circumstances. In this sense, the university campus is an ideal litmus test for expressive freedom writ large (Heinze, 2016a: 177) and, further, consequential for expressive freedom for society more broadly (Whittington, 2018).

Despite its obvious imperfections, an academic environment still bears the closest resemblance to the ideal conditions in which expressive freedom can flourish. Even if one argues that these assumptions are unfounded, and thus bring the justifications into disrepute, if expressive freedom is impossible and/or undesirable in

an academic environment, it is likely impossible and/or undesirable anywhere else. This raises the stakes of scholarship on the topic, so to speak, because if the diagnoses related to expressive freedom hold on campus, they will certainly hold elsewhere.

Epistemic Injustice

Miranda Fricker's *Epistemic Injustice: Power and the Ethics of Knowing* (2007) is now a referential text, one that has helped spawn an expanding subfield of similar work (Dotson, 2011, 2014; Kidd et al., 2017; Medina, 2013; Pohlhaus, 2011) and ought to be a pillar of contemporary expressive freedom theory. Essentially, she argues that "testimonial exchange" features the potential for biased filtering. On the receiving end of an exchange, individuals "use social stereotypes as heuristics in their spontaneous assessments of their interlocutor's credibility" (16–17). If prejudice does, in fact, lead to an interpretive loss of credibility in the speaker, two things subsequently occur: (a) an "epistemic dysfunction" whereby a credibility deficit results in less knowledge created; and (b) the individual who suffers the deficit is harmed in their "capacity as a knower" (17). Credibility deficits are most troubling when they are persistent and systematic, in the sense that they are linked to broader social signs, meanings, interpretations, and so on, that have prejudicial effects based upon one's identity-related social situatedness (that is, disproportionately less power):

Many of the stereotypes of historically powerless groups such as women, black people, or working-class people variously involve an association with some attribute inversely related to competence or sincerity or both: over-emotionality, illogicality, inferior intelligence, evolutionary inferiority, incontinence, lack of "breeding", lack of moral fibre, being on the make, etc. (32)

Primarily, the harm that accrues through epistemic injustice is an individual "wronged *qua* giver of knowledge" (Fricker, 2007: 45). Since knowing is "a capacity essential to human value," it is a harm borne by those whose contributions are assigned less credibility for reasons extrinsic to the epistemic engagement (and it might additionally entail being "symbolically degraded *qua* human") (44). At the least, prejudice uncharitably filters potential contributions to knowledge and at most outright obstructs them; therefore, it should be considered "a serious form of unfreedom in our collective speech situation" (43). One might also argue that secondary forms of harm similarly accrue at a broader level for anyone whose understanding is unnecessarily limited (and even for systems of knowledge). In this sense, "prejudice presents an obstacle to truth, either directly by causing the hearer to miss out on a particular truth, or indirectly by creating blockages in the circulation of critical ideas" (43). Finally, there are additional secondary harms associated with epistemic injustice that might include cascading perceptions of untrustworthiness and an epistemic inferiority complex (46–48).

However, not all disproportionate assignments of credibility are necessarily suspect; Fricker also outlines the parameters for "innocent error" (2007: 21). This occurs when an individual assigns less credibility to a speaker than they ought to

due to “a false belief about the speaker’s level of expertise and/or motives” (21). Importantly, a “non-culpable mistake” such as this does not inflict harm because the root of epistemic harm is a specifically prejudicial judgment of the hearer (22). Instead, it might be “an unlucky epistemic mistake” (21) or “collective epistemic bad luck” (32). She uses the example of someone who has “shifty eyes” while presenting testimony and of a hearer who, in turn, uses a potentially reliable stereotype to infer untrustworthiness. Likewise, in a more fitting academic context, she highlights potential testimonial exchanges in which a credibility deficit does not automatically translate into harm (22). For example, because academics routinely assess each other’s credibility, one might erroneously assume that another lacks credibility, expertise or authority. Fricker argues that this should be considered “a very weak sense of injustice,” as the misperception lacks “something ethically bad about the hearer’s misjudgment” (22). By contrast, the main forms of epistemically and ethically culpable practices are related to what she terms “identity-prejudicial credibility deficits” (28). Thus, “an unreliable empirical generalization” itself may or may not be a case of epistemic injustice (32).

Crucially, Fricker suggests that testimonial injustice can result in epistemic exchanges that are not strictly testimonial and that the concept should be interpreted to include “all cases of telling” (2007: 60). These instances might include, for example, “when a speaker simply expresses a personal opinion to a hearer, or airs a value judgement, or tries out a new idea or hypothesis on a given audience” (60). Within an academic context, however, there is a crucial distinction to be made between *testimony*—understood as the recounting of personal evidence and/or experience—and *argumentation*. Despite the former being easily discounted due to the credibility deficits Fricker analyzes, it is relatively less open to disagreement. When recounting a personal experience (that is, “X happened to me” or “this is what it is like to be X in Y situation”), there is less room for interpretation because it cannot be falsified in the same way that an argument might be. Part of experience is obviously subjective, but a great part of testimony is whether the event or experience actually transpired in the way recounted, which is why the assignment of credibility is so crucial. A slight exception might be if one imputes motivation or causation related to their experience. Or someone might be persuaded that their interpretation or account of events is distorted and/or unnecessarily unsympathetic—in a way similar to gaslighting—which could potentially be a form of epistemic (hermeneutical) injustice (McKinnon, 2017).

Argumentation, on the other hand, is much more open-ended, in the sense that it invites contestation by design, and particularly in an academic context. Because argumentation is always susceptible to potential disagreement, it is practically the prerequisite for scholarship. For example, the particular right of expressive freedom for academics—academic freedom—sharpens expressive freedom with institutional protections. Similar to expressive freedom (in a general sense), it is a counter-majoritarian protection (Fish, 2014; Horn, 1999a). According to James L. Turk, academic freedom “is a *special* right of academics—a right to freedom from prescribed orthodoxy in their teaching, research, and lives as academics” (2014: 11). Therefore, provided that neither institutional policy nor applicable law has been violated, academic freedom ought to insulate scholars from undue interference and subject their work only to the judgment of their peers. Without a distinction

between testimony and argumentation, elastic conceptualizations of harm might legitimize expressive injunctions well within the boundaries of expressive freedom (and academic freedom) and similarly delegitimize interrogative practices that are necessary to assess scholarly merit.

Although non-academics do not enjoy these special protections—and thus a distinction between expressive freedom and academic freedom is merited (Dea, 2018; Fish, 2019; Scott, 2019)—expressive freedom is still a pillar of campus life that animates the unique role of the university in society, as even a cursory review of institutional mission statements will quickly reveal. Further, one might argue that expressive freedom derives its legitimacy less from external legal frameworks than from the fact that “it is constitutive of the institution” (Whittington, 2018: 29). This is at least one reason why student agitation, including the Free Speech Movement, was able to gradually expand the scope of expressive freedom for students on campus (Horn, 1999b).

If this distinction between testimony and argumentation holds, I argue that it would be unreasonable to adopt the same standards for epistemic injustice in both domains. Within the domain of argumentation, in particular, there is a responsibility to carve out a space for reasonable disagreement. The key difference is that while an individual’s identity and/or experience should not be “up for debate,” their arguments (that is, analysis, recommendations, proposals, suggestions, hypotheses, etc.) absolutely are, and it needs to be the case that an individual’s argumentation can be challenged without necessarily invalidating their identity and/or experience. Similarly, while one easily strays into unsavoury territory by evaluating the merit of an identity and/or experience, universities are an enterprise dedicated to the evaluation of argumentative merit (Fish, 2019; Heinze, 2016a: 176–77; Scott, 2019). Therefore, credibility deficits related to one’s argumentation are not exactly analogous to credibility deficits related to one’s testimony.

Aiding this distinction is another made by Sigal Ben-Porath in her recent book *Free Speech on Campus* (2017). In assessing the alleged campus crisis, she advocates for a theoretical position parallel to those who argue for hate speech restrictions in liberal democracies (see Waldron, 2012). Essentially, the dichotomous framing of protection from harm and expressive freedom belies the mutually constitutive nature of the two concepts (Ben-Porath, 2017: 42–43). In order for epistemic exchange to actually mirror the ideal of expressive freedom, individuals must enjoy democratic equality. Thus, well-defined expressive restrictions may be consonant with expressive freedom, rather than an aberration. Nonetheless, she is also attendant to the ways expressive freedom and open inquiry can be limited by elastic conceptualizations of harm.

In this spirit, she argues that one ought to distinguish between two forms of safety on campus: dignitary and intellectual. *Dignitary safety* is the ability for professors and students to be accorded both equality and dignity in their academic pursuits. This type of safety is arguably *the* prerequisite for a properly functioning academic environment. Hopefully, if this is satisfied, members of the community are equally “invited to contribute to a discussion as a valued participant” (Ben-Porath, 2017: 62). *Intellectual safety*, on the other hand, is to have one’s concepts, ideas, worldviews and opinions remain intact, without needing to judge their

merit through epistemic contestation. It includes a “refusal to listen to challenges to one’s views or to consider opposing viewpoints” and is ultimately antithetical to the mission of higher education (62).

Ben-Porath’s modest remedy is a framework of “inclusive freedom” that balances the putative tension between protection from harm and valuing expressive freedom in an academic context. Importantly, she also claims that not every invocation of harm is necessarily legitimate, in the sense that it is automatically sufficient to justify expressive limits on campus. In other words, while one may genuinely experience harm, the invocation of harm should not be uncritically received as an expressive injunction. In fact, there may be many academic contexts in which some discomfort could be considered good pedagogy, and educational environments ought to cultivate spaces of reasonable disagreement. Likewise, an identity reliably commensurate with disproportionately less identity-based power does not automatically translate into argumentative potency or legitimacy (Ben-Porath, 2017: 68). Instead, “dignitary safety . . . should be understood as an aspect of access” (68). Put more simply, identity itself cannot insulate an individual from legitimate criticism, provided it does not cause dignitary harm, and dignitary harm (as outlined by Ben-Porath) is a more useful framework for drawing lines about what types of expression are (il)legitimate on campus. While not prescriptive, one potential way to distinguish dignitary harm is to take into consideration a distinction between testimony and argumentation. Credibility deficits arising from testimony would constitute dignitary harm. Credibility deficits arising from argumentation, however, would not constitute dignitary harm; they would merely constitute a challenge to intellectual safety.

But if identity and argumentation are interwoven, as many scholars might argue, is it epistemically unjust if a person regarded someone working within a specific framework as intellectually untrustworthy? How might one draw the line between an identity-based prejudice and an argument-based prejudice? The problem, then, is that neatly delineating testimony and argumentation is no simple task. The example mentioned earlier can be slightly altered to clarify. Considering that so much of scholarship is divided into various theoretical and methodological camps, it is likely that credibility is spontaneously assigned prejudicially in academic exchanges as a rule and not as an exception. As Fricker (2007) notes, “A hearer could seemingly perpetrate a testimonial injustice without harbouring any prejudice at all” (41).

However, for Fricker, the determinative factor in assessing the moral culpability associated with potential credibility deficits is prejudice (and especially prejudice related to disproportionate identity-based power). Assigning a default credibility deficit to an interlocutor within (academic) testimonial exchange would be non-culpable if it is based upon one’s well-considered beliefs about an inferior theory, framework, methodology, approach, and so on. However, this becomes more complicated when these are intimately interwoven with personal experience and/or group identity. For example, is it possible to know if prejudice is the genuine catalyst for assigning a credibility deficit? If someone—to take another example—finds feminist theorists or critical race theorists genuinely unpersuasive because of their scholarly argumentation (rather than the normative ends attached to such scholarship), can they do so without moral culpability? What would be the difference between finding a specific theory and/or methodology suspect because it lacks

sufficient merit, in that person's view, and suspect because it is associated with a stereotypical (negative) conjuring of an identity group?

Although it is impossible to conclusively separate scholarly merit and the conjuring of negative stereotypes (and the former can surely masquerade as the latter), a distinction between testimony and argumentation can substantially address the problem. The ethical imperative or virtue associated with Fricker's (2007) framework is to maintain a position of "critical openness" (66) that subsumes the potential for credibility deficits via (un)conscious prejudice (92–93). Thus, in order for good communication to transpire, "the hearer must exercise a certain reflexive critical awareness" (92). In its most basic form, individuals should overcome the default skepticism they might normally exercise when engaging in epistemic exchanges. This is a reasonable expectation, and Fricker is correct to say that denying some the ability to contribute to the creation of knowledge (and the necessary trust and good will to foster epistemic exchange) is a serious injustice (58–59). However, it is not self-evident how this theoretical approach might coalesce with an academic environment in which expression typically enjoys a wide margin of (moral) appreciation. For example, would a broad position of default skepticism in the academy be problematic? I think not, and for this reason, the same ethical position cannot extend from the realm of testimony into argumentation. However, there is a crucial caveat to be made: a distinction between testimony and argumentation can solely apply in circumstances in which a credibility deficit can be attributed to an anticipated argumentative position and not to an identity category.

For good reasons, an expectation of falsifiability would be unreasonable in the domain of testimony. It would inevitably lead to the harm of invalidating someone's identity and/or experience, such as attempts to convince a person that their perceptions are mistaken. One can legitimately question experiential interpretation, but an adversarial method, for example, would not necessarily refine testimony to be more "truthful." Due to the particularities of an academic environment, and especially the reflexive nature of the adversarial method of knowledge production, the suspension of default skepticism is as difficult as it is undesirable. Even amid the lack of a "simple universal characterization of good scientific reasoning" (Moulton, 2003: 152), there is still good reason to prioritize argumentation, because it is a form of "quality control" (ensuring scholarship is properly vetted by relevant experts) and the foundation of institutional legitimacy (how the scholarly enterprise justifies itself).

As Fricker (2007) mentions, there are epistemic exchanges in which it would be completely reasonable to assign an interlocutor a default credibility deficit (35). For example, if someone were known to contribute unreliable information, it would be reasonable to assign that person less epistemic credibility. Likewise, if someone were known to contribute reliable information, it would be reasonable to assign that person more epistemic credibility. While extrinsic factors might influence one's spontaneous assignment of credibility (such as appearance and/or behaviour, etc.), it is not unreasonable to assume that the reliability of a person's (argumentative) epistemic contribution is the primary catalyst for such a determination. In such cases, a credibility deficit would not constitute harm; it is instead "epistemic bad luck," even if the subject of the credibility deficit has disproportionately less identity-based power.

This raises at least two potential problems. First, there is the obvious difficulty of how to understand credibility deficits that arise when there is significant overlap between one's identity (and commensurate identity-based power) and one's argumentation. Importantly, an academic environment that thrives on reasonable disagreement does not necessarily require the suspension of default credibility deficits in order to foster good epistemic practices. The barometer should not be whether individuals suffer credibility deficits but, rather, whether interlocutors are ultimately impervious to superior reasoning and argumentation. In other words, the fact that an interlocutor might assign a speaker a default credibility deficit based on the speaker's perceived argumentative position does not mean that the interlocutor is impervious to that speaker's reasoning or argumentation. While it would be reasonable to say that such a speaker might face a disproportionate burden in imparting their position because of a credibility deficit, the deficit itself would not be unjust, provided it is not catalyzed by their identity. In sum, while it would be harmful to assign less credibility to an interlocutor due primarily to their identity (especially if they hold disproportionately less identity-based power), it would not be harmful to assign less credibility to an interlocutor due primarily to their argumentation.

Second, could it be reliably predicted whether a credibility deficit is catalyzed by an interlocutor's argumentation and not their identity? I think yes, because an academic environment is nominally premised upon (argumentative) merit. While a hearer may assign a credibility deficit during epistemic exchanges, that hearer ultimately bears the onus of presenting reasons why a specific argumentative position deserves less credibility. Thus, the test case for predicting the catalyst for (un)just credibility deficits is whether superior argumentation and reasoning is able to shift one's view (Fricker, 2007: 34). If an inferior argument persists despite compelling epistemic contributions, one may reasonably conclude that something extrinsic to the merits of the contribution (such as prejudice and/or stereotypes) is part of the interpretive calculus.

Argumentational Injustice

Stephanie Kapusta (2018) builds upon Fricker's concept of epistemic injustice, specifically examining the nexus of identity and argumentation. In 2017, the feminist philosophy field was polarized by a peer-reviewed journal article in *Hypatia* (written by Rebecca Tuvel) that analogized transgender and transracial identities, framed in part by the radically different reactions to Caitlyn Jenner and Rachel Dolezal's self-identifications. According to Tuvel's critics, her analysis was not just lacking in rigour but harmful (Schuessler, 2017; Tuvel, 2017; Winnubst, 2017). Kapusta responds directly to this controversy by focussing on the ways in which marginalized identities might experience disproportionate burdens within epistemic exchange ("argumentational injustice").

She argues persuasively that philosophical engagement ought to be considered a form of "argumentational work" (Kapusta, 2018: 65), with naturally associated benefits that make it a desirable pursuit. These are typically "non-monetary 'goods'" that include "excellence in performing relevant tasks, social status, community and collaboration, and a sense of self-respect" (65). However, there are differential

costs and benefits associated with epistemic engagement that can be traced to identity. In her words: "There is an unwarranted selective exposure of some of the arguers to the risk of these harms, and this exposure occurs due to the fact that they are members of a marginalized group, that is, socially situated within systems of subordination" (66). Particularly in academic disciplines where an individual researcher or writer's own identity is relevant as it relates to disadvantage, marginalization and/or exclusion, it is more difficult to construe intellectual engagement as a disinterested or detached endeavour:

Some philosophers have an acute interest in presenting or disputing arguments that treat *their own* identity, oppression, or marginalization. That interest arises because these philosophers are existentially invested in presenting and correctly analyzing the injustice to which they themselves, as members of marginalized communities, are exposed. It is thus an over-simplification to consider merely the cognitive costs of engaging in certain arguments. There may also be significant emotional costs of some form. (65)

The potential harm, then, is the experience of disproportionate burdens that flow naturally from certain forms of argumentation; not only is someone marginally situated less likely to derive expected goods from epistemic engagement but they are also more likely to experience psychological harm (Kapusta, 2018: 64). It is not primarily the assignment of credibility within epistemic exchange that is privileged *per se* (although this is certainly relevant) but rather the reasonably expected identity-related costs and benefits that might be sufficient conditions for "argumentational injustice." As a result, there are two types of injustice that potentially flow from argumentational work: (a) some will face relatively higher "burdens of argumentational engagement" commensurate with their social situatedness, and (b) arguers might experience psychological harm ("harm injustice") as a result of epistemic engagement (62). Avoiding such pitfalls requires, according to Kapusta, engagement with academic literatures that engage diverse identities and experiences, in addition to being attentive to the concerns of marginalized individuals so as to not perpetuate disproportionate burdens (70).

Kapusta entertains a number of potential objections to her position (2018: 68–69), but I think there are at least two additional (but no less relevant) difficulties that flow from her argument. First, it is entirely possible that an individual invokes harm (and experiences this harm as something intimately connected to their identity) to describe an epistemic engagement where there is simply reasonable disagreement. Considering that harm is innately subjective, it is always possible that what is experienced as harm can be amplified or dampened based upon an individual's personal circumstances and experiences. That said, while one ought not simply discount experiences of harm (as this would constitute dignitary harm), invocations of harm are not an automatic indication that a specific epistemic exchange is illegitimate and/or that expressive freedom ought to be restricted. Further, since the invocation of harm might lead to some form of punitive consequences, precision in the description of harm is paramount. Relevant questions might include who has been harmed, whether the epistemic exchange is linked

to broader patterns of marginalization, and the type and level of harm (potentially ranging from mild conversational discomfort to palpable psychological trauma).

Second, it seems untenable that certain arguments would be relatively more immune from scholarly criticism simply because specific arguers had borne disproportionate burdens of argumentation. A reasonable ethical imperative is taking these burdens into consideration within epistemic engagement, but drawing a more definitive line between violations of dignitary safety and intellectual safety is warranted. After all, one might unfortunately face disproportionate burdens of argumentation but still present arguments that are worthy of critique. In consideration of these two difficulties, I again think there is a sharp distinction to be made between testimony and argumentation. In this instance, it is more specifically the difference between one's argumentation being invalidated and one's identity being invalidated; the former does not automatically constitute the latter, even when there is a strong correlation between the two. Although Kapusta's work is framed as a good epistemic practice and not a prescriptive injunction, it still runs the risk of positing an elastic conceptualization of harm by conflating disproportionate argumentative burdens and dignitary harm. While the latter might render expressive restrictions appropriate, evidence of the former alone would not be a sufficient condition for limiting expressive freedom in an academic context.

Epistemic Exploitation

Nora Berenstain (2016) similarly builds upon Fricker's concept of epistemic injustice with a specific focus on the position of default skepticism. According to her, "epistemic exploitation" occurs when marginalized individuals have an explanatory obligation placed upon them if and when they invoke harm (that is, testimony of disadvantage, marginalization and/or exclusion). When invocations of harm are greeted with skepticism rather than acknowledged as "contributions to knowledge," a privileging occurs whereby some have access to the epistemic labour of others without any innate value attached to it (586). In this sense, identity again conditions epistemic exchange because harm may be experienced doubly: first as a result of one's identity and again in needing to overcome default skepticism to gain credibility and legitimacy. In her words:

Epistemic exploitation occurs when privileged persons compel marginalized persons to produce an education or explanation about the nature of the oppression they face. Epistemic exploitation is a variety of epistemic oppression marked by unrecognized, uncompensated, emotionally taxing, coerced epistemic labor (570).

Accordingly, warranting explanation is a typical method of diversion or distraction, conveniently eliding any responsibility or implication in the conditions that might generate such harm. The onus of surmounting this burden of proof often relegates complaint to the less valued epistemic class of conjecture, personal affect and partial observation. To compound this uneven demand of epistemic labour, the potential consequences of non-performance further constitutes a double bind. If a marginalized individual chooses not to substantiate their claims, so to speak, they

may cement their image as opportunistic, angry, aggressive or as acting in bad faith. Nonetheless, if they choose to perform this ostensibly “exploitative demand,” there is by no means a guarantee that the result will be positive for either interlocutor (Berenstain, 2016: 576). On this point, Berenstain and Kapusta overlap seamlessly. The result of these epistemic exchanges may, in fact, be a disheartening confirmation of ignorance and wasted emotional, psychological and physical energy. Most importantly, Berenstain argues that those who defend interrogative practices—being a “devil’s advocate” or “offering alternative explanations,” for example—are masquerading epistemic exploitation as a “virtuous epistemic practice related to the pursuit of truth” (571).

Clearly, Berenstain’s point is merited; good epistemic practices would surely include being cognizant of disproportionate identity-based burdens. But is harm self-evident when an individual invokes it? Further, is every invocation of harm legitimate in the sense that default skepticism is rarely, if ever, warranted? In practice, particularly for an academic environment, this conceptualization of harm poses some difficulties. Principally, it posits harm as something entirely subjective. Of course, in an academic environment, the object of moral concern ought to be potentially harmful expression that jeopardizes full participation in the community. Thus, this should not be read as an invitation to automatically question the identities and experiences of individuals if and when they present painful testimony. In this case, a “virtuous epistemic practice” would be empathy and humility and decidedly *not* default skepticism. But due to the institutional mandate to foster spaces of open inquiry on campus, drawing a neat line between mere discomfort (as a potentially unavoidable externality) and harm (which might merit an institutional response) is no easy task. Unfortunately, there will be occasions in which otherwise reasonable disagreement is subjectively experienced as harm. In these situations, it would be presumptuous to assume that specific identity categories (even those that reliably correlate with relatively less identity-based power) automatically translate into credibility and/or argumentative superiority (or that skepticism itself constitutes an oppressive act).

The obvious retort is that not all potential harms are equal. As all three of the interrelated concepts—epistemic injustice, argumentational injustice and epistemic exploitation—make clear, identity conditions one’s epistemic exchanges and may disproportionately burden some over others. Accordingly, the harm experienced by those with relatively less identity-based power takes normative precedence over those with relatively more. If one truly cares about equity within educational contexts, this principle or position is unassailable. Its negation would seriously jeopardize the prerequisite equality for open and equal learning opportunities. However, again, a distinction between testimony and argumentation is useful in parsing this complexity in order to do justice to both expressive freedom and equitable learning environments.

While default skepticism is typically inappropriate in the context of presenting testimony related to one’s identity and experience, interrogative practices (like those earlier mentioned) are not necessarily inappropriate in the context of argumentation (even if related to potentially painful experiences). In this sense, it ought to be reasonable to assume that interrogative practices can engage with argumentation (that is, reasonable disagreement) without impinging upon the moral and intellectual

worth of epistemic interlocutors. Since judging argumentative merit (by some standard) is required of all scholarly pursuits, it remains unclear how critical but legitimate questions could be raised without doing some harm, by Berenstain's standard.

The primary target of Berenstain's position is default skepticism, a pillar of political theory but no less vital to a range of other disciplines. But here, again, a distinction between testimony and argumentation is useful to address the elasticity of harm within Berenstain's framework. When marginalized individuals provide testimony related to the oppression they face, an ethical epistemic practice would be the "reflexive critical awareness" suggested by Fricker (2007: 92). But while one should hopefully extend the same critical awareness to marginalized individuals when they make arguments, it is not necessarily an oppressive practice to interrogate specifically argumentative claims (even if based to a large degree on identity and/or experience). There is no doubt that an onus placed on marginalized individuals to substantiate testimony would be unjust if it were disproportionately burdensome and/or catalyzed by identity-based credibility deficits. In an academic environment, however, identity and/or experience cannot insulate someone from scrutiny and criticism if and when they are making specifically argumentative claims, nor should invocations of harm be an automatic expressive injunction.

Conclusion

Contemporary events confirm the truism that expressive freedom's limit is a perennial question for liberal democracies, and the university campus is an unambiguous front in debates to redefine that limit. But despite the alleged campus crisis resulting in much spilled ink, the predominant explanatory frameworks focussing on student fragilities or diversity backlashes mostly fail in grappling with the core issue: how elastic conceptualizations of harm are increasingly legitimizing expressive restrictions. As a partial corrective, I have offered a mostly sympathetic critique of three exemplary theoretical concepts that offer novel conceptualizations of harm and bear directly on expressive limits in an academic environment: epistemic injustice, argumentational injustice and epistemic exploitation.

While these approaches are laudable in the sense that they highlight potential harms flowing from expression that may not be part of mainstream debate about expressive limits, they pose some particular problems for an academic environment. Taken together, they require a more definitive conceptualization of harm in order to distinguish between reasonable disagreement, on the one hand, and morally culpable harm arising from expression, on the other. I contend that a distinction between testimony and argumentation is a way to retain the ethical imperative associated with each of these concepts while minimizing the risk of elastic conceptualizations of harm that are laden with unintended consequences for expressive freedom.

Of course, this does not mean that expression that falls short of legal or institutional thresholds does not or cannot cause harm, but it does mean that harm itself is neither a self-evident and sufficient justification to limit expression, nor an automatic immunization from scholarly interrogation and critique. To be clear, there are surely ways to be sensitive to invocations of harm while simultaneously fostering expressive freedom and open inquiry. Good epistemic practices, then, require careful distinction if one is to do justice to both imperatives.

References

- Baer, Ulrich. 2019. *What Snowflakes Get Right: Free Speech, Truth, and Equality on Campus*. New York: Oxford University Press.
- Bartlett, Tom. 2018. "What's So Dangerous about Jordan Peterson?" *Chronicle of Higher Education*. January 17. <https://www.chronicle.com/article/What-s-So-Dangerous-About/242256?>
- Bawer, Bruce. 2012. *The Victims' Revolution: The Rise of Identity Studies and the Closing of the Liberal Mind*. New York: Broadside Books.
- Ben-Porath, Sigal. 2017. *Free Speech on Campus*. Philadelphia: University of Pennsylvania Press.
- Berenstein, Nora. 2016. "Epistemic Exploitation." *Ergo* 3 (22): 569–90.
- Berman, Paul, ed. 1992. *Debating P.C.: The Controversy over Political Correctness on College Campuses*. New York: Dell.
- Booth, Laura. 2018. "Faith Goldy Talk at Wilfrid Laurier University Shut Down by Fire Alarm after Protest." *Toronto Star*. March 20. <https://www.thestar.com/news/canada/2018/03/20/faith-goldy-talk-at-wilfrid-laurier-university-shut-down-by-fire-alarm-after-protest.html>.
- Braun, Stefan. 2004. *Democracy Off Balance: Freedom of Expression and Hate Propaganda Law in Canada*. Toronto: University of Toronto Press.
- Buckley, William F., Jr., 1951. *God and Man at Yale: The Superstitions of "Academic Freedom"*. Chicago: Regenery.
- Cameron, Jamie. 1997. "The Past, Present, and Future of Expressive Freedom under the Charter." *Osgood Hall Law Journal* 35 (1): 1–74.
- Cameron, Jamie. 2012. "A Reflection on Section 2(b)'s Quixotic Journey, 1982–2012." *Supreme Court Law Review* 58 (6): 163–94.
- Cameron, Jamie. 2013. "The McLachlin Court and the Charter in 2012." *Supreme Court Law Review* 63 (2d): 15–41.
- Cameron, Jamie. 2020. "Compelling Freedom on Campus: A Free Speech Paradox." *Constitutional Forum* 29 (2): 5–18.
- Carpay, John and Michael Kennedy. 2018. "Another Grim Year for Free Speech on Canada's Campuses." *National Post*. September 19. <https://nationalpost.com/opinion/opinion-another-grim-year-for-free-speech-on-canadas-campuses>.
- Chemerinsky, Erwin and Howard Gillman. 2017. *Free Speech on Campus*. New Haven: Yale University Press.
- Climenhaga, David J. 2019. "Push for Free Speech Charter on Alberta Campuses Will Privilege Radical Right." *Rabble*. July 30. <https://rabble.ca/blogs/bloggers/alberta-diary/2019/07/push-free-speech-charter-alberta-campuses-will-privilege>.
- Cohen, Robert. 2009. *Freedom's Orator: Mario Savio and the Radical Legacy of the 1960s*. Oxford: Oxford University Press.
- Dea, Shannon. 2018. "My Office Door and the Campus Free Speech Crisis That Never Was." *University Affairs*. December 14. <https://www.universityaffairs.ca/opinion/dispatches-academic-freedom/my-office-door-and-the-campus-free-speech-crisis-that-never-was/>.
- Delgado, Richard and Jean Stefancic. 2004. *Understanding Words That Wound*. Boulder: Westview Press.
- Delgado, Richard and Jean Stefancic. 2018. *Must We Defend Nazis? Why the First Amendment Should Not Protect Hate Speech and White Supremacy*. New York: New York University Press.
- Dotson, Kristie. 2011. "Tracking Epistemic Violence, Tracking Practices of Silencing." *Hypatia* 26 (2): 236–57.
- Dotson, Kristie. 2014. "Conceptualizing Epistemic Oppression." *Social Epistemology* 28 (2): 115–38.
- Dworkin, Andrea. 1981. *Pornography: Men Possessing Women*. New York: Perigee Books.
- Fanon, Franz. 2008. *Black Skin, White Masks*. New York: Grove Press.
- Ferguson, Roderick. 2012. *The Reorder of Things: The University and Its Pedagogies of Minority Difference*. Minneapolis: University of Minnesota Press.
- Fish, Stanley. 2014. *Versions of Academic Freedom: From Professionalism to Revolution*. Chicago: University of Chicago Press.
- Fish, Stanley. 2019. *The First: How to Think about Hate Speech, Campus Speech, Religious Speech, Fake News, Post-Truth, and Donald Trump*. New York: Atria/One Signal.
- Fricker, Miranda. 2007. *Epistemic Injustice: Power and the Ethics of Knowing*. Oxford: Oxford University Press.

- Friedersdorf, Conor. 2015. "The New Intolerance of Student Activism." *Atlantic*. November 9. <https://www.theatlantic.com/politics/archive/2015/11/the-new-intolerance-of-student-activism-at-yale/414810/>.
- Friedersdorf, Conor. 2016. "The Glaring Evidence That Free Speech Is Threatened on Campus." *Atlantic*. March 4. <https://www.theatlantic.com/politics/archive/2016/03/the-glaring-evidence-that-free-speech-is-threatened-on-campus/471825/>.
- Friesen, Joe. 2018. "Ontario Colleges Adopt Single Free-Speech Policy as Universities Rush to Meet Deadline." *Globe and Mail*. December 16. <https://www.theglobeandmail.com/canada/article-ontario-universities-scramble-to-release-common-free-speech-policy/>.
- Fuller, Thomas. 2017. "A Free Speech Battle at the Birthplace of a Movement at Berkeley." *New York Times*. February 2. <https://www.nytimes.com/2017/02/02/us/university-california-berkeley-free-speech-milo-yiannopoulos.html>.
- Gates, Henry Louis, Jr., Anthony P. Griffin, Donald E. Lively, Robert C. Post, William B. Rubenstein and Nadine Strossen. 1994. *Speaking of Race, Speaking of Sex: Hate Speech, Civil Rights, and Civil Liberties*. New York: New York University Press.
- Gelber, Katharine. 2002. *Speaking Back: The Free Speech versus Hate Speech Debate*. Amsterdam: John Benjamins.
- Gelber, Katharine and Luke McNamara. 2016. "Evidencing the Harms of Hate Speech." *Social Identities* 22 (3): 324–41.
- Graney, Emma. 2019. "UCP Prepares to Roll Out Ford-Flavoured Post-secondary Changes in Alberta." *Edmonton Journal*. May 6. <https://edmontonjournal.com/news/politics/ucp-prepares-to-roll-out-ford-flavoured-post-secondary-changes-in-alberta>.
- Hartocollis, Anemona. 2017. "A Campus Argument Goes Viral. Now the College Is under Siege." *New York Times*. June 16. <https://www.nytimes.com/2017/06/16/us/evergreen-state-protests.html>.
- Hauen, Jack. 2017. "Facing Pushback, Ryerson University Cancels Panel Discussion on Campus Free Speech." *National Post*. August 16. <https://nationalpost.com/news/canada/facing-pushback-ryerson-cancels-panel-discussion-on-campus-free-speech>.
- Heinze, Eric. 2016a. *Hate Speech and Democratic Citizenship*. Oxford: Oxford University Press.
- Heinze, Eric. 2016b. "Towards a Post-liberal Theory of Free Expression." *Critical Legal Thinking: Law and the Political*. September 6. <https://criticallegalthinking.com/2016/09/06/towards-post-liberal-theory-free-expression/>.
- Heinze, Eric. 2017. "Free Speech Debates Are More Than 'Radicals' vs 'Liberals.'" *Free Speech Debate*. January 5. <https://freespeechdebate.com/discuss/662013834/>.
- Heinze, Eric. 2019a. "No-Platforming and Safe Spaces: Should Universities Censor More (or Less) Speech Than the Law Requires?" *Croatian Political Science Review* 55 (4): 79–108.
- Heinze, Eric. 2019b. "An Anti-Liberal Defense of Free Speech: Foundations of Democracy in the Western Philosophical Canon." In *The Oxford Handbook of Law and Humanities*, ed. Simon Stern, Maksymilian Del Mar and Bernadette Meyler. Oxford: Oxford University Press.
- Henry, Frances, Enakshi Dua, Carl E. James, Audrey Kobayashi, Peter Li, Howard Ramos and Malinda S. Smith. 2017. *The Equity Myth: Racialization and Indigeneity at Canadian Universities*. Vancouver: UBC Press.
- Horn, Michiel. 1999a. *Academic Freedom in Canada: A History*. Toronto: University of Toronto Press.
- Horn, Michiel. 1999b. "Students and Academic Freedom in Canada." *Historical Studies in Education* 11 (1): 1–32.
- Hutchins, Aaron. 2017. "What Really Happened at Wilfrid Laurier University." *Maclean's*. December 11. <https://www.macleans.ca/lindsay-shepherd-wilfrid-laurier/>.
- Kapusta, Stephanie. 2018. "The Benefits and Burdens of Engaging in Argumentation: Trans*feminist Reflections on Tuvel's 'In Defense of Transracialism.'" *Atlantis: Critical Studies in Gender, Culture & Social Justice* 39 (2): 61–73.
- Kidd, Ian James, José Medina and Gaile M. Pohlhaus. 2017. *The Routledge Handbook of Epistemic Injustice*. London: Routledge.
- Kimball, Roger. 1990. *Tenured Radicals: How Politics Has Corrupted Higher Education*. New York: HarperCollins.
- Langton, Rae. 1993. "Speech Acts and Unspeakable Acts." *Philosophy and Public Affairs* 22 (4): 293–330.
- Lawrence, Charles R., III. 1987. "The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism." *Stanford Law Review* 39 (2): 317–88.

- Levenson, Zachary. 2017. "Free Speech and the Politics of the Dog Whistle." *Huffington Post*. May 1. https://www.huffpost.com/entry/free-speech-and-the-politics-of-the-dog-whistle_b_59076592e4b03b105b44baa7.
- Liptak, Adam. 2018. "How Conservatives Weaponized the First Amendment." *New York Times*. June 30. <https://www.nytimes.com/2018/06/30/us/politics/first-amendment-conservatives-supreme-court.html>.
- Lukianoff, Greg and Jonathan Haidt. 2015. "The Coddling of the American Mind." *Atlantic*. September. <https://www.theatlantic.com/magazine/archive/2015/09/the-coddling-of-the-american-mind/399356/>.
- Lukianoff, Greg and Jonathan Haidt. 2018. *The Coddling of the American Mind: How Good Intentions and Bad Ideas Are Setting Up a Generation for Failure*. New York: Penguin.
- MacDonald, Heather. 2018. *The Diversity Delusion: How Race and Gender Pandering Corrupt the University and Undermine Our Culture*. New York: St. Martin's Press.
- MacKinnon, Catharine A. 1993. *Only Words*. Cambridge: Harvard University Press.
- Malik, Nesrine. 2019. "The Myth of the Free Speech Crisis." *Guardian*. September 3. <https://www.theguardian.com/world/2019/sep/03/the-myth-of-the-free-speech-crisis?>
- Malyk, Lauren. 2017. "Protesters Disrupt Ezra Levant Talk at Ryerson." *Ryersonian*. March 23. <https://ryersonian.ca/protesters-disrupt-ezra-levant-talk-at-ryerson/>.
- Manne, Kate and Jason Stanley. 2015. "When Free Speech Becomes a Political Weapon." *Chronicle of Higher Education*. November 13. <https://www.chronicle.com/article/When-Free-Speech-Becomes-a/234207>.
- Marchak, Patricia. 1996. *Racism, Sexism and the University: The Political Science Affair at the University of British Columbia*. Kingston and Montreal: McGill-Queen's University Press.
- Matsuda, Mari J., Charles R. Lawrence III, Richard Delgado and Kimberlé Williams Crenshaw. 1993. *Words That Wound: Critical Race Theory, Assaultive Speech, and the First Amendment*. Boulder: Westview Press.
- McGowan, Mary Kate. 2019. *Just Words: On Speech and Hidden Harm*. Oxford: Oxford University Press.
- McKinnon, Rachel. 2017. "Allies Behaving Badly: Gaslighting as Epistemic Injustice." In *The Routledge Handbook of Epistemic Justice*, ed. Ian James Kidd, José Medina and Gaile Pohlhaus Jr. New York: Routledge.
- Medina, José. 2013. *The Epistemology of Resistance: Gender and Racial Oppression, Epistemic Injustice, and Resistant Imaginations*. New York: Oxford University Press.
- Mill, John Stuart. 2015. *On Liberty, Utilitarianism and Other Essays*, ed. Mark Philp and Frederick Rosen. Oxford: Oxford University Press.
- Moon, Richard. 2000. *The Constitutional Protection of Freedom of Expression*. Toronto: University of Toronto Press.
- Moon, Richard. 2019. "What Happens When the Assumptions Underlying Our Commitment to Free Speech No Longer Hold?" *Constitutional Forum* 28 (1): 1–5.
- Moskowitz, P. E. 2019. *The Case against Free Speech: The First Amendment, Fascism, and the Future of Dissent*. New York: Bold Type Books.
- Moulton, Janice. 2003. "A Paradigm of Philosophy: The Adversary Method." In *Discovering Reality: Feminist Perspectives on Epistemology, Metaphysics, Methodology, and Philosophy of Science*, ed. Sandra Harding and Merrill B. Hintikka. 2nd ed. Dordrecht: Springer.
- Murphy, Rex. 2016. "Jordan Peterson—a Real Professor, at Last." *National Post*. October 28. <https://nationalpost.com/opinion/rex-murphy-jordan-peterson-a-real-professor-at-last>.
- Newman, Stephen L. 2017. "Finding the Harm in Hate Speech: An Argument against Censorship." *Canadian Journal of Political Science* 50 (3): 679–97.
- Palfrey, John. 2017. *Safe Spaces, Brave Spaces: Diversity and Free Expression in Education*. Cambridge: MIT Press.
- Panzar, Javier and Alene Tchekmedyian. 2017. "9 Arrested as Protesters Gather at UC Berkeley for Talk by Conservative Speaker Ben Shapiro." *Los Angeles Times*. September 15. <https://www.latimes.com/local/california/la-me-berkeley-protest-shapiro-20170914-htmlstory.html>.
- Peters, Jeremy W. and Thomas Fuller. 2017. "Ann Coulter Says She Will Pull Out of Speech at Berkeley." *New York Times*. April 26. <https://www.nytimes.com/2017/04/26/us/ann-coulter-berkeley-speech.html>.
- Peterson, Jordan B. 2016. "Canadian Gender-Neutral Pronoun Bill Is a Warning for Americans." *The Hill*. October 18. <https://thehill.com/blogs/pundits-blog/civil-rights/301661-this-canadian-prof-defied-sjw-on-gender-pronouns-and-has-a>.
- Picazo, Alheli. 2017. "How the Alt-Right Weaponized Free Speech." *Maclean's*. May 1. <https://www.macleans.ca/opinion/how-the-alt-right-weaponized-free-speech/>.

- Pohlhaus, Gaile. 2011. "Relational Knowing and Epistemic Injustice: Toward a Theory of Willful Hermeneutical Ignorance." *Hypatia* 27 (4): 715–35.
- Press Progress. 2019. "Jason Kenney's Deceptive 'Free Speech' Policy Creates Safe Spaces for Anti-Abortion Activists and Hate Groups." May 7. <https://pressprogress.ca/jason-kenneys-deceptive-free-speech-policy-creates-safe-spaces-for-anti-abortion-activists-and-hate-groups/>.
- Rangwala, Shama. 2019. "The Real Free-Speech Crisis on Alberta's Campuses Might Not Be What You Think It Is." *Globe and Mail*. August 31. <https://www.theglobeandmail.com/opinion/article-the-real-free-speech-crisis-on-albertas-campuses-might-not-be-what/>.
- Reddekopp, Lorenda. 2017. "Not on My Campus." CBC News. *The National*, April 17. YouTube video. <https://www.youtube.com/watch?v=miYwyW3jpK8>.
- Richer, Stephen and Lorna Weir. 1995. *Beyond Political Correctness: Toward the Inclusive University*. Toronto: University of Toronto Press.
- Roth, Michael S. 2019. *Safe Enough Spaces: A Pragmatist's Approach to Inclusion, Free Speech, and Political Correctness on College Campuses*. New Haven: Yale University Press.
- Sachs, Jeffrey Adam. 2018. "There Is No Campus Free Speech Crisis: A Close Look at the Evidence." Niskanen Center. April 27, <https://www.niskanencenter.org/there-is-no-campus-free-speech-crisis-a-close-look-at-the-evidence/>.
- Sachs, Jeffrey Adam. 2019. "The 'Campus Free Speech Crisis' Ended Last Year." Niskanen Center. January 25. <https://www.niskanencenter.org/the-campus-free-speech-crisis-ended-last-year/>.
- Saskatchewan (Human Rights Commission) v. Whatcott*, 2013 SCC 11, [2013] 1 S.C.R. 467.
- Saul, Stephanie. 2017. "Dozens of Middlebury Students Are Disciplined for Charles Murray Protest." *New York Times*. May 24. <https://www.nytimes.com/2017/05/24/us/middlebury-college-charles-murray-bell-curve.html>.
- Schuessler, Jennifer. 2017. "A Defense of 'Transracial' Identity Roils Philosophy World." *New York Times*. May 19. <https://www.nytimes.com/2017/05/19/arts/a-defense-of-transracial-identity-roils-philosophy-world.html>.
- Schutten, André and Richard Haigh. 2015. "Whatcott and Hate Speech: Re-Thinking Freedom of Expression in the Charter Age." *National Journal of Constitutional Law* 34 (1): 1–30.
- Scott, Joan W. 2019. *Knowledge, Power, and Academic Freedom*. New York: Columbia University Press.
- Scruton, Roger. 2015. *Fools, Frauds and Firebrands: Thinkers of the New Left*. London: Bloomsbury.
- Smith, Evan. 2020. *No Platform: A History of Anti-Fascism, Universities and the Limits of Free Speech*. New York: Routledge.
- Spivak, Gayatri Chakravorty. 1988. "Can the Subaltern Speak?" In *Marxism and the Interpretation of Culture*, ed. Cary Nelson and Lawrence Grossberg. Basingstoke: Macmillan.
- Sumner, L. W. 2004. *The Hateful and the Obscene: Studies in the Limits of Free Expression*. Toronto: University of Toronto Press.
- Thomason, Andy. 2019. "Here's What Trump's Executive Order on Free Speech Says." *Chronicle of Higher Education*. March 21. <https://www.chronicle.com/article/Here-s-What-Trump-s/245943>.
- Tsesis, Alexander. 2002. *Destructive Messages: How Hate Speech Paves the Way for Harmful Social Movements*. New York: New York University Press.
- Turk, James L., ed. 2014. *Academic Freedom in Conflict: The Struggle over Free Speech Rights in the University*. Toronto: Lorimer.
- Tuvel, Rebecca. 2017. "In Defense of Transracialism." *Hypatia* 32 (2): 263–78.
- Waldron, Jeremy. 2012. *The Harm in Hate Speech*. Cambridge: Harvard University Press.
- Wente, Margaret. 2016. "The Radicals Have Taken Over: Academic Extremism Comes to Canada." *Globe and Mail*. December 3. <https://www.theglobeandmail.com/opinion/academic-extremism-comes-to-canada/article33185073/>.
- Whittington, Keith E. 2018. *Speak Freely: Why Universities Must Defend Free Speech*. Princeton: Princeton University Press.
- Winnubst, Shannon. 2017. "Why Tuvel's Article So Troubled Its Critics." *Chronicle of Higher Education*. May 8. <https://www.chronicle.com/article/Why-Tuvel-s-Article-So/240029>.
- Wong, Julia Carrie and Sam Levin. 2017. "Ann Coulter Cancels Speech (Again)—but Battle for Berkeley's Political Soul Rages On." *Guardian*. April 26. <https://www.theguardian.com/us-news/2017/apr/26/uc-berkeley-far-right-speakers-free-speech-protests>.

- Zine, Jasmin. 2018. "The Alt-Right and the Weaponization of Free Speech on Campus." *Academic Matters*. Fall. <https://academicmatters.ca/the-alt-right-and-the-weaponization-of-free-speech-on-campus/>.
- Zwibel, Cara Faith. 2013. "Reconciling Rights: The Whatcott Case as Missed Opportunity." *Supreme Court Law Review* 63 (2d): 313–35.